suit was sufficient to give a ground of action and amounted to *prima facie* evidence of debt, yet it was not conclusive and the case might be reëxamined on the merits. It is now settled that a foreign judgment, when rendered by a court having jurisdiction and without fraud and while still remaining in force abroad, is binding and conclusive in the English courts in all cases and not open to impeachment or reëxamination on the merits. See 26 *Harvard Law Review* 298-301; *Harvey* vs. *Farnie*, 8 App. Cas. 43, 5 Eng. Rul. Cases 703; *Castrique* vs. *Imrie*, L. R. 4 H. L. 414, 5 Eng. Rul. Cases 899; and 34 *Corpus Juris* 1167.

"From English decisions we may conclude, first, that a party may by contract consent to the jurisdiction of a foreign court; and, second, that a judgment obtained in a foreign country pursuant to such a consent will be enforced in England. However, there is one point with respect to the English law which must be considered. The cases upholding consent by contract are cases in which some means of serving process was specifically provided in the contract. Paragraph 10 in the policy under consideration does not provide any such means; therefore, it is our opinion that it should be revised to include an agent in California for the purpose of accepting process."

In addition to the problems discussed by Mr. Peart, the committee was advised of the fact that there are at least a dozen and probably many more different types of Lloyd's contracts issued in this State by different surplus line brokers, each representing a particular underwriting group in London. Some of the Lloyd's policies brought to the attention of the committee were wholly inadequate, others afforded a fair degree of coverage, and a few compared favorably with policies issued by domestic insurers. But all of these policies presented the problem of enforcement in England and the additional problem of financial reserves in California.

Finally, one broker, the Lloyd M. Kahn Company of San Francisco, submitted a policy form to the committee for its approval or disapproval. This form was submitted to Mr. Peart with the request that he review it and suggest any changes that, in his opinion, would benefit the medical profession. Mr. Peart reviewed the policy and submitted a written opinion in which several changes were strongly recommended, including a paragraph by which the surplus line broker acting for the underwriting group at Lloyd's would consent to the jurisdiction of the California courts and a paragraph by which the underwriters would appoint an agent in San Francisco to act for them in all matters arising under the policy. All of these recommendations were immediately accepted by the Lloyd M. Kahn Company, and your committee was subsequently informed by Mr. Lloyd M. Kahn that the underwriting group at Lloyd's in London, upon whose behalf he was acting through a surplus line broker in San Francisco, had likewise accepted all of the recommendations. Thereupon your committee expressed its approval of this particular policy and caused such approval to be published in the Bulletin of the Society.

Only one other surplus line broker or agent representing underwriters at Lloyd's has submitted to your committee any form for approval or disapproval, and, unfortunately, that policy (submitted by O'Brien and Blackman Company) has not as yet been received from the Society's attorney, to whom it was recently referred by the Board of Directors.

Therefore, and taking into account the admittedly chaotic condition which exists with respect to Lloyd's of London malpractice insurance, your committee expressly recommends that the San Francisco County Medical Society express for the time being its lack of approval of all malpractice insurance policies issued in the name of Lloyd's of London, except the particular policy form issued by the Lloyd M. Kahn Company and previously approved, as stated above.

Before concluding, your committee once again desires to recommend to the members of the San Francisco County Medical Society that each and every member obtain membership in the Medical Society of the State of California. Membership in the Medical Society is obtainable upon application by any physician who is a member of the California Medical Association and who carries at least $5,000 of malpractice insurance. Membership cost is nominal, and it means that competent expert legal assistance can be obtained by the member to guard his personal interests and to aid his insurer's attorney if he is sued or threatened with suit. Your committee specifically recommends that every member of the County Society communicate with Dr. F. C. Warnshuis, Secretary of the Medical Society of the State of California, for further details.

The committee approves the three old line companies—Fort Wayne, United States Fidelity and Guaranty, and the Zurich—and of the Lloyd's policies studied by the committee, the committee believes the policy issued by the Lloyd M. Kahn Company to be the best available at the present time.

Respectfully submitted,

P. K. GILMAN, *Chairman.*

January 10, 1938.

THE PHYSICIAN'S INCOME TAX—1938*

This discussion relates only to the requirements of the Federal income tax law. Information with respect to the requirements of state income tax laws should be obtained from responsible state sources.

The Revenue Act of 1936 amended in numerous respects the prior income tax law, but none of the changes made relate to physicians as a class distinct from the main body of federal income taxpayers.

Every one who is required to make a Federal income tax return must do so on or before March 15, unless an extension of time for filing his return has been granted. For cause shown, the collector of internal revenue for the district in which the taxpayer files his return may grant such an extension, on application filed with him by the taxpayer. This application must state fully the causes for the delay. Failure to make a return may subject the taxpayer to a penalty of 25 per cent of the amount of the tax due.

The normal rate of tax on residents of the United States and on all citizens of the United States regardless of their places of residence is 4 per cent on net income in excess of the exemptions and credits.

WHO MUST FILE RETURNS

1. If gross income was less than $5,000 during 1937, a return must be filed (*a*) by every unmarried person, and by every married person not living with her husband or his wife, whose net income was $1,000 or more, and (*b*) by every married person living with her husband or his wife, whose net income was $2,500 or more. If the aggregate net income of husband and wife, living together, was $2,500 or more, each may make a return or the two may unite in a joint return.

2. Returns must be filed by every person whose gross income in 1937 was $5,000 or more, regardless of the amount of his net income and of his marital status. If the aggregate gross income of husband and wife, living together, was $5,000 or more, they must file either a joint return or separate returns, regardless of the amounts of their joint or individual net incomes.

If the status of a taxpayer, so far as it affects the personal exemption or credit for dependents, changed during the year, the personal exemption and credit must be apportioned, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month should be disregarded unless it amounts to more than half a month, in which case it is to be considered as a month.

As a matter of courtesy only, blanks for returns are sent to taxpayers by the collectors of internal revenue, without request. Failure to receive a blank does not excuse any one from making a return; the taxpayer should obtain the necessary blank from the local collector of internal revenue.

The following discussion covers only matters relating specifically to physicians. Full information concerning questions of general interest may be obtained from the official return blank and from the collectors of internal revenue.

GROSS AND NET INCOMES: WHAT THEY ARE

Gross Income.—A physician's gross income is the total amount of money received by him during the year for pro-

* Prepared by the American Medical Association Bureau of Legal Medicine and Legislation. From the *Journal of the American Medical Association,* January 20, 1938.

fessional services, regardless of the time when the services were rendered for which the money was paid, plus such money as he has received as profits from investments and speculation and as compensation and profits from other sources.

Net Income.—Certain professional expenses and the expenses of carrying on any enterprise in which the physician may be engaged for gain may be subtracted as "deductions" from the gross income, to determine the net income on which the tax is to be paid. An "exemption" is allowed, the amount depending on the taxpayer's marital status during the tax year as stated before. These matters are fully covered in the instructions on the tax return blanks.

Earned Income.—In computing the normal tax, but not the surtax, there may be subtracted from net income from all sources an amount equal to 10 per cent of the earned net income, except that the amount so subtracted shall in no case exceed 10 per cent of the net income from all sources. Earned income means professional fees, salaries, and wages received as compensation for personal services, as distinguished from receipts from other sources.

The first $3,000 of a physician's net income from all sources may be regarded under the law as earned net income, whether it was or was not in fact earned within the meaning set forth in the preceding paragraph. Net income in excess of $3,000 may not be claimed as earned unless it in fact comes within that category. No physician may claim as earned net income any income in excess of $14,000.

DEDUCTIONS FOR PROFESSIONAL EXPENSES

A physician is entitled to deduct all current expenses necessary in carrying on his practice. The taxpayer should make no claim for the deduction of expenses unless he is prepared to prove the expenditure by competent evidence. So far as practicable, accurate itemized records should be kept of expenses and substantiating evidence should be carefully preserved. The following statement shows what such deductible expenses are and how they are to be computed:

Office Rent.—Office rent is deductible. If a physician rents an office for professional purposes alone, the entire rent may be deducted. If he rents a building or apartment for use as a residence as well as for office purposes, he may deduct a part of the rental fairly proportionate to the amount of space used for professional purposes. If the physician occasionally sees a patient in his dwelling house or apartment, he may not, however, deduct any part of the rent of such house or apartment as professional expense; to entitle him to such a deduction he must have an office there, with regular office hours. If a physician owns the building in which his office is located, he cannot charge himself with "rent" and deduct the amount so charged.

Office Maintenance.—Expenditures for office maintenance, as for heating, lighting, telephone service and the services of attendants, are deductible.

Supplies.—Payments for supplies for professional use are deductible. Supplies may be fairly described as articles consumed in the using; for instance, dressings, clinical thermometers, drugs and chemicals. Professional journals may be classified as supplies, and the subscription price deducted. Amounts currently expended for books, furniture and professional instruments and equipment, "the useful life of which is short," generally less than one year, may be deducted; but if such articles have a more or less permanent value, their purchase price is a capital expenditure and is not deductible.

Equipment.—Equipment comprises property of a more or less permanent nature. It may ultimately wear out, deteriorate or become obsolete, but it is not in the ordinary sense of the word "consumed in the using."

The cost of equipment, such as is described above, for professional use, cannot be deducted as expense in the year acquired. Examples of this class of property are automobiles, office furniture, medical, surgical, and laboratory equipment of more or less permanent nature, and instruments and appliances constituting a part of the physician's professional outfit, to be used over a considerable period of time, generally over one year. Books of more or less permanent nature are regarded as equipment and the purchase price is, therefore, not deductible.

Although the cost of such equipment is not deductible in the year acquired, nevertheless it may be recovered through depreciation deductions taken year by year over its useful life, as described below.

No hard and fast rule can be laid down as to what part of the cost of equipment is deductible each year as depreciation. The amount depends to some extent on the nature of the property and on the extent and character of its use. The length of its useful life should be the primary consideration. The most that can be done is to suggest certain average or normal rates of depreciation for each of several classes of articles and to leave to the taxpayer the modification of the suggested rates as the circumstances of his particular case may dictate. As fair, normal or average rates of depreciation, the following have been suggested: automobiles, 25 per cent a year; ordinary medical libraries, x-ray equipment, physical therapy equipment, electrical sterilizers, surgical instruments and diagnostic apparatus, 10 per cent a year; office furniture, 5 per cent a year.

The principle governing the determination of all rates of depreciation is that the total amount claimed by the taxpayer as depreciation during the life of the article, plus the salvage value of the article at the end of its useful life, shall not be greater than its purchase price or, if purchased before March, 1913, either its fair market value as of that date or its original cost, whichever may be greater. The physician must in good faith use his best judgment and claim only such allowance for depreciation as the facts justify. The estimate of useful life, on which the rate of depreciation is based, should be carefully considered in his individual case.

In a Treasury Decision, approved February 28, 1934, No. 4422, it is held, among other things, that

1. The cost to be recovered shall be charged off over the useful life of the property.
2. The reasonableness of any claim for depreciation shall be determined on the conditions known to exist at the end of the period for which the return was made.
3. Where the cost or other basis of the property has been recovered through depreciation or other allowances, no further deduction for depreciation shall be allowed.
4. The burden of proof will rest on the taxpayer to sustain the deduction claimed.
5. The deduction for depreciation in respect to any depreciable property for any taxable year shall be limited to such ratable amount as may reasonably be considered necessary to recover during the remaining life of the property the unrecovered cost or other basis.

Particular attention is called to the last of the foregoing provisions. If, in prior years, rates have been claimed which, if continued, will fully depreciate the cost, less salvage, before the end of its useful life, based on conditions now known, a reëstimate of the remaining useful life should now be made and the portion of the cost that had not been depreciated at the beginning of the year 1937 (for a return for the year 1937) should be spread over this reestimated life.

Medical Dues.—Dues paid to societies of a strictly professional character are deductible. Dues paid to social organizations, even though their membership is limited to physicians, are personal expenses and not deductible.

Postgraduate Study. — The Commissioner of Internal Revenue holds that the expense of postgraduate study is not deductible.

Traveling Expenses. — Traveling expenses, including amounts paid for transportation, meals and lodging, necessarily incurred in professional visits to patients and in attending medical meetings for a professional purpose, are deductible.

Automobiles.—Payment for an automobile is a payment for permanent equipment and is not deductible. The cost of operation and repair, and loss through depreciation, are deductible. The cost of operation and repair includes the cost of gasoline, oil, tires, insurance, repairs, garage rental (when the garage is not owned by the physician), chauffeurs' wages, and the like.

Deductible loss through depreciation of an automobile is the actual diminution in value resulting from obsolescence and use and from accidental injury against which the physician is not insured. If depreciation is computed on the basis of the average loss during a series of years, the series must extend over the entire estimated life of the car, not merely over the period in which the car is in the possession of the present taxpayer.

If an automobile is used for professional and also for personal purposes—as when used by the physician partly for recreation, or so used by his family—only so much of the expense as arises out of the use for professional purposes may be deducted. A physician doing an exclusive office practice and using his car merely to go to and from his office cannot deduct depreciation or operating expenses; he is regarded as using his car for his personal convenience and not as a means of gaining a livelihood.

What has been said in respect to automobiles applies with equal force to horses and vehicles and the equipment incident to their use.

MISCELLANEOUS

Contributions to Charitable Organizations. — For detailed information with respect to the deductibility of charitable contributions generally, physicians should consult the official return blank or obtain information from the collectors of internal revenue or from other reliable sources. A physician may not, however, deduct as a charitable contribution the value of services rendered an organization operated for charitable purposes.

Laboratory Expenses. — The deductibility of the expenses of establishing and maintaining laboratories is determined by the same principles that determine the deductibility of corresponding professional expenses. Laboratory rental and the expenses of laboratory equipment and supplies and of laboratory assistants are deductible when under corresponding circumstances they would be deductible if they related to a physician's office.

Losses by Fire or Other Causes.—Loss of and damage to a physician's equipment by fire, theft or other cause, not compensated by insurance or otherwise recoverable, may be computed as a business expense and is deductible, provided evidence of such loss or damage can be produced. Such loss or damage is deductible, however, only to the extent to which it has not been made good by repair and the cost of repair claimed as a deduction.

Insurance Premiums. — Premiums paid for insurance against professional losses are deductible. This includes insurance against damages for alleged malpractice, against liability for injuries by a physician's automobile while in use for professional purposes, and against loss from theft of professional equipment and damage to or loss of professional equipment by fire or otherwise. Under professional equipment is to be included any automobile belonging to the physician and used for strictly professional purposes.

Expense in Defending Malpractice Suits.—Expense incurred in the defense of a suit for malpractice is deductible as a business expense.

Sale of Spectacles.—Oculists who furnish spectacles, etc., may charge as income money received from such sales and deduct as an expense the cost of the article sold. Entries on the physician's account books should in such cases show charges for services separate and apart from charges for spectacles, etc.

CALIFORNIA CLINICAL LABORATORY LAW AND CHIROPRACTORS*

San Francisco, January 13, 1938.

C. C. Hunt, D.C.,
Secretary, Board of Chiropractic Examiners,
404 Forum Building,
Sacramento, California.

Dear Sir:

In your communication of December 23, 1937, you refer to Chapter 804, Statutes 1937, being "an Act relating to the conduct of clinical laboratories and the licensing of clinical laboratory technologists and clinical laboratory technicians for the purpose of protecting public health," etc. You refer to the printed copy of a communication entitled, "Information Concerning the New Laboratory Law," and recite certain statements which you state to be contained therein.

The first statement is as follows:

A clinical laboratory is defined to be a place or establishment where any tests, no matter how limited, are made.

This statement is in conflict with Section 2 of Chapter 804, which reads as follows:

For the purpose of this Act a clinical laboratory is defined as follows: Any place, establishment or institution organized and operated for the practical application of one or more of the fundamental sciences by the use of specialized apparatus, equipment, and methods for the purpose of obtaining scientific data which may be used as an aid to ascertain the presence, progress, and source of disease.

Consequently, the information or statements in the work referred to by you are erroneous.

Section 3 of the Act referred to defines technologist as being "any person who engages in the work and direction of a clinical laboratory as herein defined." Therefore, resort must be taken to Section 2 of the Act defining a clinical laboratory, and the second statement which you state is contained in the document referred to by you is, likewise, erroneous for the reason that it is too broad. There may be many kinds of laboratories which are not covered by the definition of clinical laboratory set forth in the Act.

The expression "technician" is defined in Section 4 of the chapter under discussion, and the information contained in the document referred to by you is incorrect in so far as it conflicts with the definition of technician contained in the Act.

The fourth statement contained in the work referred to by you is correct, provided the technologist is licensed.

You state the applicant for a license under this act, either with or without examination, must have experience and educational qualifications far in excess of those required for license under the Chiropractic Act, and refer to paragraph 12 of the information concerning the new laboratory law, and quote as follows:

The law does not require technicians working in a doctor's office to be licensed, unless work is done for other doctors, or for the patients of other doctors.

The statement immediately above quoted is correct under the law in so far as it relates to technicians employed in a physician's and surgeon's office who do work for other physicians or the patients of other physicians, said work not being under the immediate control and supervision of his employer. The test is, does the technician do work for his immediate physician and surgeon employer, or does he do work indiscriminately for other physicians and surgeons or for patients of other physicians and surgeons.

The quoted statement is erroneous in so far as it purports to require technicians working in a licensed physician's and surgeon's office to be licensed, if it be construed to require a technician to be licensed if his physician and surgeon employer does work for other doctors or for the patients of other doctors.

The test under the law itself is whether a physician's and surgeon's office is organized and operated as a place for the practical application of one or more of the fundamental sciences by the use of specialized apparatus, equipment, and methods for the purpose of obtaining scientific data which may be used as an aid to ascertain the presence, progress or source of disease. The offices of many physicians and surgeons are not in the nature of things necessarily organized and operated for the purposes hereinabove specifically enumerated. Furthermore, the fact that such physicians and surgeons might "do work" for other doctors or for patients of other doctors does not necessarily make the office of such physician and surgeon a clinical laboratory within the definition thereof contained in the Act.

You quote Section 5 of the Chiropractic Act, which requires one hundred hours of study in chemistry and toxicology and four hundred hours in diagnosis or analysis. You then refer to Section 7 of the Chiropractic Act, and quote that portion thereof relating to the issuance of a chiropractic license, particularly that said "license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges." The above-quoted provision has been interpreted in the case of *In re Hartman,* 10 Cal. App. (2d) 213, as authorizing the holder of a chiropractic license to practice chiropractic—whatever chiropractic may be—regardless of what the individual was taught in a chiropractic school or college. To the same effect is the opinion rendered by Honorable John J. Van Nostrand, in the Superior Court of the State of California, in that case numbered 257362,

* See letter in this issue from Dr. C. B. Pinkham, on page 214.